

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA**

In the Matter of the Decision of
the Agricultural Commissioner of
the County of Santa Barbara
(County File No. 034-ACP-SB-00/01)

Administrative Docket No.106

DECISION

**VALLEY FARM SUPPLY
850 Riata Lane
Nipomo, California 93444**

Appellant /

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5 and section 6130 of Title 3, California Code of Regulations (3 CCR), county agricultural commissioners may levy a civil penalty up to \$1,000 for certain violations of California's pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the Santa Barbara County Agricultural Commissioner found that the appellant, Valley Farm Supply (VFS), violated 3 CCR section 6568 (a) and (c). The commissioner imposed a penalty of \$151 for the violation.

VFS appealed from the commissioner's decision to the Director of the Department of Pesticide Regulation and requested a new hearing. The Director has jurisdiction in the appeal under FAC section 12999.5.

Standard of Review

The Director decides matters of law using his independent judgment. Matters of law include the meaning and requirements of laws and regulations. For other matters, the Director decides them on the record before the Hearing Officer. In reviewing the record, the Director looks to see if there was substantial evidence, contradicted or uncontradicted, before the Hearing Officer to support the Hearing Officer's findings and the commissioner's decision. The Director notes that witnesses sometimes present contradictory testimony and information; however, issues of witness credibility are in the province of the Hearing Officer.

The substantial evidence test requires only enough relevant information and inferences from that information to support a conclusion, even though other conclusions might also have been reached. In making the substantial evidence determination, the Director draws all reasonable inferences from the information in the record to support the findings, and reviews the record in the light most favorable to the commissioner's decision. If the Director finds substantial evidence in the record to support the findings and decision, the Director affirms the decision.

Appellant's Contentions Regarding the Hearing Officer

The Appellant contended that the Hearing Officer "is coming from a biased point of view due to her position as Deputy Ag [sic] Commissioner for Ventura County." According to the Appellant, the fact that the Hearing Officer "is in charge of Pesticide Use Enforcement" and the fact that Ventura and Santa Barbara counties have a common boundary created a "conflict of interest which put VFS at an obvious disadvantage."

Under California law, it is a well-settled principle that due process in the case of an administrative hearing requires only a reasonably impartial, noninvolved reviewer, McIntyre v. Santa Barbara County Employees' Retirement System, 91 Cal.App. 4th 730 (2001); Linney v. Turpin, 42 Cal.App. 4th 763 (1996). Also, the mere fact that the decisionmaker or his/her staff is a more active participant in the fact-finding process will not render the administrative procedure unconstitutional, Howitt v. Superior Court, County of Imperial, 3 Cal.App. 4th 1575 (1992).

In the case at hand, the Hearing Officer was not part of the investigatory process. Also, she is an employee of the agricultural commissioner in another county, Ventura, not Santa Barbara County. These facts show that the Hearing Officer was a reasonably impartial decisionmaker.

The burden is on the Appellant to produce facts to show that the Hearing Officer was actually biased against it. The Appellant did not meet that burden. Due process requirements in regard to this hearing were not offended.

Appellant's Other Allegations

- The Appellant alleged that the Hearing Officer held VFS at a higher "level of evidence" than she did of the Santa Barbara County Agricultural Commissioner's office. Additionally, the Appellant stated that "Ms. Trupe (Debra Trupe, Supervising Inspector, Santa Barbara County Agricultural Commissioner's Office) had stated that the hearing was going to be 'conducted quite informally,' and she did not make it clear that VFS needed to bring all of their files to the hearing."

The Notice of Proposed Action, sent on April 23, 2001, clearly states “You are also entitled to a hearing to review the Commissioner’s evidence and present any evidence, oral or written on your behalf, as to why the Commissioner should not take the proposed action.” (Emphasis added.) The Santa Barbara County Agricultural Commissioner’s office sent a letter, dated May 28, 2001, to VFS. This letter invited questions from VFS. The record does not indicate that VFS made any additional requests for information about the hearing. The record clearly indicates VFS had notice to bring to the hearing any and all evidence it wanted to introduce at the hearing. Therefore, this allegation is without merit.

- The Appellant alleged that its office is located in San Luis Obispo County. However, both inspection reports, signed by Mr. Compton and dated September 14, 2000, and December 4, 2000, respectively, list a location for VFS as 1279 West Stowell Street, Santa Maria, California. This location is in Santa Barbara County. The Appellant had a pesticide sales office in Santa Barbara County. Therefore, the Santa Barbara County Agricultural Commissioner’s office had jurisdiction in this matter.
- The Appellant contended that “VFS was not informed of any fineable wrong doing [sic] until after April 25, 2001.” FAC section 13000 provides that a commissioner must bring this type of civil penalty action within two years of the occurrence of the violation. The Santa Barbara County Agricultural Commissioner issued the Notice of Proposed Action on April 23, 2001, well within the two-year time period allowed by law. Therefore, this allegation is without merit.

Section 6568 (a) and (c); Dealer Responsibilities

In relevant part, subsections (a) and (c) of section 6568 provide that each licensed pesticide dealer that sells a restricted material, which requires a permit for its use and possession, shall, before sale or delivery, obtain a copy of the permit. Additionally, prior to the sale or delivery of certain pesticides to the operator of the property, the dealer must obtain from the purchaser a copy of the restricted materials permit showing all operator identification numbers, if the purchaser has such a permit, or a copy of the operator identification number form issued to an operator of the property pursuant to section 6622.

Section 6562 of 3 CCR requires pesticide dealers to maintain various records at the sales office and produce them for inspection on request of the agricultural commissioner. Included in those records are the pesticide purchaser's name and address; the product purchased and the amount; the operator identification number(s) specified in section 6622 on the invoice, or a statement on the invoice indicating the purchaser was not required to obtain an operator identification number. Section 6562 does not apply to pesticides labeled only for home use.

There is information in the record that VFS is a licensed pesticide dealer. On September 14, 2000, Santa Barbara County Agricultural Inspector Mike Champion conducted a pest control records inspection at VFS's pesticide sales office at 1277 West Stowell Road in Santa Maria, California. At the time of this inspection, VFS was unable to produce copies of restricted materials permits or operator identification forms for some pesticides sold in 1999 as "cash sales." Invoices at VFS did not have restricted materials permit numbers or operator identification numbers written on them and could not be matched with any permits or operator identification numbers because the purchaser was only listed as "cash."

There is also information in the record that on December 4, 2000, Santa Barbara County Agricultural Inspector Jeff Saleen conducted a pest control records inspection at VFS's pesticide sales office in Santa Maria. Inspector Saleen noted that there was no paper trail for sales in 1999, although there was a paper trail for sales in 2000. During the hearing, the Appellant admitted that he could not show that he had obtained the required permit or operator identification number form prior to 1999 pesticide sales designated on invoices as "cash sales."

A reasonable inference from this information is that VFS did not obtain restricted material permits or operator identification numbers prior to some 1999 pesticide sales and violated 3 CCR section 6568.

Conclusion

The record shows the commissioner's decision is supported by substantial evidence, and there is no cause to reverse or modify the decision.

Disposition

The commissioner's decision is affirmed. The Appellant's request for a new hearing is denied.

The commissioner shall notify the appellant how and when to pay the penalty for its violation of 3 CCR section 6568 (a) and (c).

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Judicial Review

Under FAC section 12999.5, the appellant may seek court review of the Director's decision within 30 days of the date of the decision. The appellant must bring the action under Code of Civil Procedure section 1094.5.

STATE OF CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

By: original signed by Dated: 2-27-02
Paul E. Helliker
Director